

Federal Communications Commission

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
ACS Television, L.L.C.)	File Number EB-01-AN-053
)	
K25FM, K27FJ, K39EP, K43EY, K44EQ,)	NAL/Acct. No. 20023278001
K46EN, K49EE, K50EP, K52FI, K53FN,)	
K63FT, K64FA, K65GM, K67GT, K68FF)	FRN: 599308
)	
510 L Street, Suite 500)	
Anchorage, Alaska)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released:, January 22, 2002

By the Anchorage Resident Agent Office, Enforcement Bureau:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that ACS Television, L.L.C. ("ACS"), licensee of the 15 above-referenced LPTV stations and the registered owner of Antenna Structure Registration Number 1204036, has apparently violated section 503(b) of the Communications Act of 1934 ("Act"), as amended¹, and Section 74.780, and 73.3538 of the Federal Communications Commission's Rules (FCC rules)², by changing the location of the antenna, the overall height above ground of the antenna structure (AGL), the height of antenna radiation center above ground, and the height above mean sea level of the 15 above-referenced station, without prior authorization granted by the Commission. We conclude that ACS is apparently liable for forfeiture in the amount of thirteen thousand dollars (\$13,000).

II. BACKGROUND

2. On March 21, 2001, Anchorage Resident Agents inspected ACS's registered antenna structure, #1204036, located near Eagles Nest Subdivision, Eagle River, Alaska. Antenna for each of the 15 above referenced LPTV stations, licensed to ACS, are mounted on the structure.

¹ 47 U.S.C. § 503(b).

² 47 C.F.R. § 74.780, § 73.3538.

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The Antenna Structure Registration lists the geographic coordinates for this structure as: N61 20

8.8, W149 30 56.2. The agents calculated the coordinates for the structure at the time of inspection as: N61 20 10.6, W149 30 46.8. According to FCC records, the 15 above-referenced stations' antennas are authorized to operate at: N61 20 10, W149 30 43.

3. During the inspection, the agents determined that the antennas on structure #1204036 are mounted near the top of the structure, with the antenna panel mountings beginning at a height of approximately 43 meters (141 ft.) and continuing to the top of the structure. According to the Antenna Structure Registration, the overall height of the structure above mean sea level is 577.9 meters (1,896 ft.), the overall height above ground (AGL), including all appurtenances is 61.0 meters (200 ft.), and the overall height above ground (AGL), without appurtenances is 54.8 meters (180 ft.). According to FCC records, the 15 LPTV stations are authorized for an antenna height of radiation above ground of 13.95 meters (45 ft.), height of radiation center above mean seal level of 592 meters (1,942 ft.) on a structure with overall height above ground (AGL) of 18.9 meters (62 ft.).

4. On April 11, 2001, the agents verified, by direction finding techniques that the previously referenced 15 LPTV stations were transmitting from the location of the above mentioned registered antenna structure.

5. On April 19, 2001, the Anchorage Resident Agent Office, issued an Official Notice of Violation ("NOV") to ACS, advising that the 15 LPTV stations were constructed and operating at variance with the station authorization, in violation of Part 74 of the FCC's rules. In particular, the NOV detailed the variances in geographic coordinates, and the agents findings that the antenna for the 15 stations were mounted on the tower at a height approximately 100 feet higher than authorized. The NOV noted that Section 74.780, 73.3538(a)(1) and (4), and 73.1690(b)(2) require FCC grant of a construction permit prior to making any change in station geographic coordinates, including coordinate corrections, and any change in height of the antenna radiation center above ground.

6. On May 8, 2001, the Anchorage Resident Agent Office received a written response to the NOV from ACS Television, L.L.C. ACS stated:

In or around November 1998, the previous owners, Goldbelt Inc., constructed a new transmission tower at Eagle's Nest approximately 100 feet from the tower existing at the time and obtained FAA clearance for it. Under the previous ownership, the LPTV antenna system was transferred to the new tower at Eagle's Nest and the old tower removed. The older tower was never registered with the FCC, presumably because it was less than 200 feet in height and was not otherwise required to be registered. ACS has since learned that the newer tower was registered by the previous owners under registration #1204036 on or about October 1, 1999.

Subsequent to acquiring the tower, and in part in response to a prospective tower tenant which was concerned about a potential coordinates discrepancy, ACS-TV decided to clear the tower through the FAA in 2000, and in August 2000, ACS-TV modified the existing registration assuming that it was correcting a minor discrepancy in coordinates which might have been the function of rounding between NAD27 and NAD83 coordinates. ACS-TV did not become aware of improper or unauthorized movement of the LPTV antenna system until the Commission's notice was received.

As a consequence of this discovery, ACS-TV is proceeding as rapidly as possible to obtain FCC authority for the current operation of the LPTV stations and to amend pending applications, which are erroneous.

7. The Anchorage Resident Agents subsequently reviewed FCC records on July 20, 2001, September 26, 2001 and December 5, 2001. FCC records indicate no construction permit has been granted authorizing a change in the overall height above ground of the antenna structure, height of radiation center above ground or height above mean sea level for any of the 15 stations.

The records research revealed that between October of 2000 and May of 2001, modification applications were tendered for filing, but not yet accepted for filing, for 13 of the stations requesting authority to operate at coordinates and antenna heights similar to the stations' current operations.³ On July 19, 2001, six of the LPTV stations received Class A licenses.⁴ The Class A licenses authorize operations consistent with the authorizations for the LPTV facilities, but do not reflect authorizations for construction or operation at the coordinates and antenna height at which the stations are currently operating. FCC records do not reflect any application filed, tendered or granted to modify the recently issued Class A TV authorizations.

8. On November 9, 2001, the Resident Agents performed a follow-up inspection of ACS's station licenses at ACS's office at 600 Telephone Avenue in Anchorage, Alaska. No applications and no authorizations for construction or operation of the 15 stations at the current antenna height were in the stations' records. ACS again stated that copies of all relevant authorizations and applications would be promptly provided to Anchorage Resident Agents to confirm the requisite authority for operation for the stations. As of the date of the NAL, ACS has not provided any documentation to the Anchorage Resident Agents that it possesses authority to construct or operate its stations' antenna at the current height on the current antenna structure.

III. DISCUSSION

³ Modification applications were filed for LPTV stations: K39EP; K43EY; K44EQ; K46EN; K49EE; K50EP; K52FI; K53FN; K63FT; K64FA; K65GM; K67GT; K68FF.

⁴ Stations K39EP; K43EY; K44EQ; K46EN; K49EE and K50EP were issued Class A licenses on July 19, 2001.

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9. Section 503(b) of the Act provides that any person who willfully or repeatedly fails

to comply substantially with the terms and conditions of any license, or fails to comply with any of the provisions of the Act or of any, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty. The term “willful” as used in Section 503(b) has been interpreted to mean simply that the acts or omissions are committed knowingly.⁵ It is not pertinent whether or not the licensee’s act or omissions are intended to violate the law.

10. The FCC rules applicable to TV translators, low power TV, and TV booster stations and Class A TV stations⁶ provide that prior authority is required from the FCC to make changes in the location, height, or directional radiating characteristics of the antenna or antenna system. In addition, an application for a construction permit must be filed and granted prior to construction or operation at changed geographic coordinates.⁷

11. Based on the evidence before us, we find that on March 21, 2001 and April 11, 2001, ACS Television, L.L.C., licensee of stations K25FM, K27FJ, K39EP, K43EY, K44EQ, K46EN, K49EE, K50EP, K52FI, K53FN, K63FT, K64FA, K65GM, K67GT, K68FF, willfully violated Section 503 of the Communications Act and Sections 74.780, 73.3538(a)(1), and 73.3538(a)(4) of the Commission’s Rules by constructing and operating its stations at unauthorized geographic coordinates and unauthorized antenna height of radiation center above ground.

12. The licenses for ACS’s LPTV and Class A TV stations specify operation at an antenna height significantly below the stations’ actual antenna height. Broadcast stations may not construct or operate facilities without advance approval from the FCC. Both major and minor facilities changes require construction permits.⁸ The mere filing of an application to modify station facilities does not give the permittee or licensee any authority to make the requested changes.

13. *The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines (“Forfeiture Policy Statement”),*⁹ set base forfeiture amounts of \$5,000 for exceeding authorized antenna height, \$4,000 for construction or operation at unauthorized location, \$3,000 for failure to file required forms or information, and \$1,000 for failure to maintain required records. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation(s), and with respect

⁵ Section 312(f)(1) of the Act, 47 U.S.C. §312(f)(1), which applies to Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act...” See *Southern California Broadcasting Co.*, 6FCC Red 4387(1991).

⁶ 47 C.F.R. § 74.780, 73.3538(a)(1) and (4), 73.3572.

⁷ 47 C.F.R. § 74.780, 73.1690(b).

⁸ See e.g., 47 C.F.R. § 74.780, 73.3533, 73.3538, 73.3572.

⁹ The Commission’s Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines 12 FCC Red 17087 (1997), (recon, denied), 15 FCC Red 303 (1999) (“Forfeiture Policy Statement”).

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to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other

such matters as justice may require.¹⁰

14. ACS admits in its May 8, 2001 reply to the NOV that the antennas structures for the 15 LPTV stations were moved without the requisite prior FCC approval to a new structure whose coordinates do not match the authorized coordinates. ACS further admits that the antennas are mounted on the new structure at a height that exceeds the authorized antenna radiation center height. ACS committed to promptly correct the error. Yet despite receipt of Class A licenses granted July 9, 2001 for several of the stations with coordinates and antenna information inconsistent with current operations, and despite re-inspection by FCC agents, ACS has neglected to take the necessary steps to bring its facilities into compliance with its authorizations or to amend its authorizations to seek approval to operate consistent with its current operating parameters. Applying the *Forfeiture Policy Statement* statutory factors to the instant case, a \$13,000 forfeiture is warranted.

IV. ORDERING CLAUSES

15. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Communications Act of 1934, as amended¹¹, and Sections 0.111, 0.311 and 1.80 of the Commission's Rules¹², ACS Television, L.L.C. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of thirteen thousand dollars (\$13,000) for violating Section 74.780, 73.3538(a)(1), and (a)(4) of the Rules.¹³

16. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Commission's Rules¹⁴, within thirty days of the release date of this NOTICE OF APPARENT LIABILITY, ACS Television, L.L.C. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

17. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment must include the FCC Registration Number, 599308 referenced above, and also should note the NAL/Acct. No. 20023278001.

18. The response, if any, must be mailed to Federal Communications Commission, Enforcement Bureau, Technical and Public Safety Division, 445 12th Street, S.W., Washington, D.C. 20554 and MUST INCLUDE THE NAL/Acct. No. 20023278001 referenced above.

¹⁰ 47 U.S.C. § 503(b)(2)(D).

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹³ 47 C.F.R. §§ 74.780, 73.3538(a)(1), 73.3538(a)(4).

¹⁴ 47 C.F.R. § 1.80.

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19. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

20. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivable Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁵

21. IT IS FURTHER ORDERED THAT a copy of this NOTICE OF APPARENT LIABILITY shall be sent by Certified Mail Return Receipt Requested to ACS Television, L.L.C., 510 L Street, Suite 500, Anchorage, Alaska 99501.

FEDERAL COMMUNICATIONS COMMISSION

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¹⁵ See 47 C.F.R. § 1.1914.